



DIGNITY IN SCHOOLS

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February 10, 2015

Chairman John Kline
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Robert “Bobby” Scott
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, D.C. 20515

Re: School Discipline Reform/School Climate and H.R. 5, the *Student Success Act*

Dear Chairman Kline and Ranking Member Scott:

The Dignity in Schools Campaign (DSC) is a coalition of 92 organizations from 24 states, including students, parents, educators, researchers, LGBTQ, civil rights, youth advocacy, and education organizations, dedicated to ending punitive school discipline practices that push students out of school and into the juvenile justice system. DSC is committed to the vision of a fully functional, accountable, and successful public school system that protects every student’s human right to a quality education and to be treated with dignity. The reauthorization of ESEA presents the unparalleled opportunity to turn the tide and end long-discredited zero tolerance policies and practices in our nation’s schools that are fueling the School-to-Prison-Pipeline, and to instead support inclusive classrooms where all students can thrive. We welcome the opportunity to comment on H.R. 5, the *Student Success Act*, and urge the Committee to conduct a thoughtful and deliberative reauthorization process for the Elementary and Secondary Education Act (ESEA) that incorporates the concerns of students, parents, and stakeholders and ensures that all students have access to quality educational opportunities.

We urge the Education and the Workforce Committee to act to ensure that positive and inclusive school discipline and school climate provisions are incorporated into H.R. 5 to help end discriminatory discipline practices that disproportionately impact students of color, students with disabilities, and LGBTQ-identifying students. The ESEA is a civil rights law, enacted on the heels of the Civil Rights Act of 1964, to ensure state compliance with civil rights obligations and other federal law. However, recent data indicate that discipline disparities still persist along race, disability, and LGBTQ status lines. For example, according to recent national data, African American students are suspended at three times the rate of their white peers.¹ This is despite research showing that, although African American students do not misbehave more frequently than their white peers, they are punished more severely.² In addition, students with disabilities represent only 13 percent of student enrollment nationally, but comprised one-quarter of students arrested and referred to law enforcement during the 2011-2012 school year. One in five LGBTQ students of color report being bullied.³ The data are clear that students of color, students with disabilities, and LGBTQ-identifying students are being subjected to overly punitive discipline and suffering poor educational outcomes as a result. Urgent action is needed to reverse these troubling trends and ensure that all students have the opportunity to learn and succeed in school.

To help address these discipline disparities, help schools and districts implement positive school discipline policies and practices, and improve school climate and student outcomes, the DSC urges that the following recommendations be incorporated into the *Student Success Act*:

I. Target federal funding and technical assistance towards inclusive discipline best practices proven to improve student outcomes, such as Schoolwide Positive Behavioral Interventions and Supports (SWPBIS).

Research shows that exclusionary and overly punitive discipline practices, like suspensions, expulsions, and increased presence of police in schools negatively impact student achievement.⁴ Further, research documents that such practices do not increase school safety.⁵ In fact, such

¹ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, Data Snapshot: School Discipline, *available at* <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

² Skiba, Russell, et. al, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, Policy Research Report #SRS1 (June 2000), the Indiana Education Policy Center; Rudd, Tom, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.

³ Russell, S. T., Clarke, T. J., & Laub, C. (2009). *Understanding School Safety and the Intersections of Race, Ethnicity, and Sexual Orientation*, California Safe Schools Coalition Research Brief No. 10), San Francisco, CA: CSSC; “Research shows that LGBTQ youth of color in particular face persistent and frequent harassment and bias-based bullying from peers and school staff as well as increased surveillance and policing, relatively greater incidents of harsh school discipline, and consistent blame for their own victimization.” Burdge, Hilary, et. al, Gay-Straight Alliance Network (GSA Network), *LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline*, *available at*, <http://www.gsanetwork.org/Pushout-Report>.

⁴ American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools?*, *available at* <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

⁵ NAACP Legal Defense and Educational Fund, Inc., et. al, *Police in Schools Are Not the Answer to the Newtown Shooting*, January 2013, *available at*

practices have been shown to negatively impact student achievement. The American Academy of Pediatrics, the American Psychological Association, and the Council of State Governments, have all identified links between exclusionary discipline practices (like out-of-school suspensions and expulsions) and lower academic achievement, higher dropout rates, and disengagement from the learning environment.⁶ Academic outcomes are, therefore, strongly linked to discipline practices that keep kids in the general classroom and engaged in learning.

We urge the Committee to include language from the Senate Health, Education, Labor and Pensions (HELP) Committee bill from the 113th Congress, introduced by then-Chairman Harkin, the *Strengthening America's Schools Act*, S. 1094, which would require states to describe in their state plans how they will act to reduce suspensions, expulsions, referrals to law enforcement, and other exclusionary discipline practices that remove students from the classroom. This language would give states the option of using Title I funds to implement positive discipline practices, such as Restorative Justice practices, Social and Emotional Learning (SEL) curricula, and peer mediation, which have been proven to foster positive school climates.⁷ In addition, states should provide more detailed descriptions of how they plan to address and how they are reducing the use of exclusionary practices, to ensure progress in ending discipline disparities and improving student outcomes. This is especially important for states with significant discipline disparities that are undermining the educational experiences and outcomes of students.

II. Provide federal support for local community-based organizations to partner with local schools and districts to implement community-responsive and culturally appropriate discipline practices.

In addition, most existing federal funding opportunities are targeted towards partnerships between local educational agencies (LEAs) and institutions of higher education. We agree with the Chairman's view that local communities and organizations are best suited to identify the interventions that work best in their localities. However, many local community-based organizations may not be allied with research institutions or have grant-writing capacity for most current federal funding opportunities. Therefore, we recommend that the bill provide funding opportunities for partnerships between LEAs and community-based organizations, without requiring institutional affiliation. This will give local organizations and schools the opportunity to develop and implement community-responsive interventions to reform discipline and improve school climate.

<http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf>

⁶ *Id.*

⁷ A school using its Title I funds for SWPBIS would be required to “implement positive, preventive approaches to school discipline to promote a positive school climate for all students and reduce recidivism of re-entering youth offenders and disconnected youth,” § 1111(b)(1)(M)(iii).

III. Require schools to accurately and timely report, and make publicly accessible, school discipline and school climate data, disaggregated by student subgroup.

In January 2014, for the first time, the Departments of Education and Justice issued Joint Discipline Guidance putting states and districts on notice of their responsibilities to practice non-discriminatory discipline under existing federal civil rights laws.⁸ The Guidance underscored the importance of states and districts collecting and reporting data on discipline and school climate. Specifically, the Guidance urges schools and districts to keep records on school discipline and school climate, disaggregated by student subgroups, such as race/ethnicity, disability, English language learner, and gender, to ensure compliance with Titles IV and VI of the Civil Rights Act of 1964.⁹ Currently, 18 states require some type of school discipline data collection or reporting through state statute.¹⁰ Further, in conducting investigations under Titles IV and VI of the Civil Rights Act of 1964, the Office for Civil Rights is empowered to require data reporting on school discipline and school climate to ensure compliance with the law.¹¹ In addition, the Individuals with Disabilities Education Act (IDEA)¹² already requires states to report the incidence and duration of disciplinary actions by race, ethnicity, English language learner status, gender, and disability category – so this would not be a new or burdensome requirement. We urge inclusion of data of LGBTQ students in this existing language. We recommend that the Education and the Workforce Committee require data reporting on school climate and school discipline disaggregated by student sub-group, and cross-tabulated, to ensure that a comprehensive picture of data is collected, so that any discipline disparities can be identified and addressed. This is consistent with ESEA’s goal to ensure that all students have the opportunity to learn and succeed in safe schools free of discrimination.

The *Strengthening America’s Schools Act*, S. 1094, from the 113th Congress, included language that created a comprehensive and data-driven approach to improving school climate. This kind of comprehensive data, including data from students self-identifying as LGBTQ, is essential to identifying and addressing discipline disparities, including harassment based upon gender identity or sexual orientation. In addition, data on student interactions with law enforcement in schools, including referrals and arrests, would give a more comprehensive picture of school climate and discipline. We recommend that the Committee use the data reporting language of S. 1094 and the IDEA as guides for legislative language on data reporting in H.R. 5. Having a comprehensive

⁸ Department of Education, Joint Discipline Guidance, “Dear Colleague Letter on Nondiscriminatory Administration of School Discipline,” *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>; Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, *available at* <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

⁹ Importance of Appropriate Record Keeping, Department of Education, Joint Discipline Guidance, “Dear Colleague Letter on Nondiscriminatory Administration of School Discipline,” *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

¹⁰ School Discipline Data: A Snapshot of Legislative Action, The Council of State Governments, *available at* <http://csgjusticecenter.org/wp-content/uploads/2014/03/NCSL-School-Discipline-Data-Brief.pdf>.

¹¹ 20 U.S.C. 3413 (c)(1). Section 203(c)(1) Department of Education Organizing Act of 1979.

¹² IDEA, 20 U.S.C. § 1418(a)(1)(D).

picture of school climate and discipline will help to accurately identify discipline disparities and inform interventions for remedying these disparities and improving student outcomes.

IV. Ensure that schools and districts involve parents/caregivers and students in the development and implementation of school discipline codes. Ensure that schools prominently post and disseminate school discipline policies.

Further, we urge the Committee to incorporate provisions that will promote the engagement of parents/caregivers and communities with schools in developing inclusive discipline practices that promote positive school climates. Parents/caregivers and students are the primary stakeholders in children’s education and they should be involved at all stages of the development and implementation of discipline codes. Parents/caregivers and students have the best knowledge of student needs and are well-positioned to work with local educators and school leaders. Further, schools and districts should be required to prominently post and disseminate school discipline codes so that parents/caregivers and students have proper notice of discipline codes and policies. To ensure parental/caregiver involvement, the bill should require schools to draft and implement parental involvement plans and detail measures of successful implementation of such plans by outlining measures of success.

V. Provide federal professional development funding for teachers on implicit bias, cultural competency, classroom management, and alternative discipline practices, like restorative practices.

We recommend that H.R. 5 detail that professional development funding under Title II can be used to implement professional development programming directed to improve classroom management and help reduce reliance on overly punitive discipline practices that push students out of the general classroom and result in lost learning time. For example, states could use professional development funding for SWPBIS, Restorative Justice practices, and training on implicit bias¹³ and how it impacts discipline referrals, as well as for training on cultural competency. These are the kinds of evidence-based practices that H.R. 5 notes that states can use funding for, but we urge that such practices be outlined as an allowable use of funds, since discipline disparities impact school achievement so significantly and classroom management is central to addressing these disparities.

Further, since students of color are disproportionately taught by non-credentialed and inexperienced teachers – national data show that nearly 7 percent of the nation’s African American students attend schools in which more than 20 percent of teachers have not met state certification requirements, compared to about 2 percent of white students – it is important that these instructors receive ongoing training on classroom management. Inexperienced teachers tend to overuse exclusionary and overly punitive discipline practices, like suspensions or expulsions

¹³ “Implicit bias is defined as “the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age, and appearance. Because this cognitive process functions in our unconscious mind, we are typically not consciously aware of the negative racial biases that we develop over the course of our lifetime.” Rudd, Tom, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.

for minor offenses. The resulting lost instruction time for students makes it difficult to re-integrate into the general classroom and re-engage in learning. Those students who do not successfully re-engage in the school environment are at higher risk for dropping out of school and becoming involved with the juvenile justice system, which contributes to the School-to-Prison Pipeline.

Further, many existing federal funding streams are targeted towards practices proven to negatively impact student performance, such as police in schools. Funding should instead be targeted to support teachers in the classroom to address discipline, not for the misuse of law enforcement to handle routine discipline matters.¹⁴ We suggest that the bill stipulate that no additional federal funds will go towards practices shown to negatively impact student outcomes, such as law enforcement in schools.

VI. Ensure that all publicly-funded schools comply with civil rights and anti-discrimination laws and implement non-discriminatory discipline practices.

For too long, publicly-funded charter schools have not been held accountable for discriminatory discipline practices. This fall, DSC released *Accountability Guidelines on School Pushout and Charter Schools*,¹⁵ calling for action to end systemic and structural issues contributing to school pushout in public charter schools. In particular, lack of oversight over charters for discriminatory practices has led to high discipline disparities impacting students of color. For instance, in Massachusetts, among schools with the highest rates of out-of-school suspensions, four out of five of the top suspending schools are public charter schools.¹⁶ In May 2014, the Department of Education issued Guidance on Charter Schools also requiring compliance with federal civil rights laws.¹⁷ DSC believes that all publicly-funded schools should adhere to federal civil rights laws and ensure that no students are subjected to discriminatory discipline practices. This also means ensuring that students are afforded due process during disciplinary proceedings with parental notice.

Conclusion

The reauthorization of ESEA presents the unique opportunity to take action to ensure that all students, regardless of race/ethnicity, socioeconomic status, gender, disability status, or LGBTQ status, have equal opportunity to learn and succeed in school. The data are clear, our public schools are failing students of color, students with disabilities, LGBTQ students, and low-income

¹⁴ “Given the national surge for a call for police accountability and reform, it is important to start a discussion concerning the consequences of having school safety agents and police officers in schools and start proposing alternatives to policing such as restorative justice. In this historic moment, it would be very impactful to not only advocate for police reform in the streets but also in our schools.” See Raihan, Jensine (Naomi), DRUM Youth Leader, *Youth Member Blog on #BlackLivesMatter* (January 16, 2015), available at <http://www.dignityinschools.org/blog/youth-member-blog-blacklivesmatter>.

¹⁵ *Accountability Guidelines on School Pushout and Charter Schools*, available at http://www.dignityinschools.org/sites/default/files/DSC_Charter_Accountability_Guidelines.pdf.

¹⁶ *Id.*

¹⁷ U.S. Department of Education, Office for Civil Rights, Dear Colleague, *Obligations of Charter Schools to Comply with Federal Civil Rights Laws*, May 14, 2014, available at <http://www.ed.gov/news/press-releases/us-department-education-issues-guidance-obligations-charter-schools-comply-feder>.

students. DSC believes that “when school climates celebrate the dignity of [all] students and strive to keep them in school, young people can reach their [full] potential and succeed in education, employment, and life.”¹⁸ It is time to act to ensure that the ESEA fulfills its promise to level the playing field so that all students have access to quality educational opportunities. We cannot afford to sideline addressing discipline disparities when they have such a direct and significant impact on student achievement and outcomes. We have the evidence of what works, now it is time to target federal support towards proven strategies, like Social and Emotional Learning (SEL) curricula and ongoing professional development training. DSC looks forward to working with the Education and the Workforce Committee, through a thoughtful, deliberative, bipartisan and inclusive reauthorization process, to realize the promise envisioned in ESEA and ensure that all students have the equal opportunity to learn and succeed. If you have any questions about our recommendations or concerns outlined herein, please contact Janel George at jgeorge@naacpldf.org. Thank you for your consideration of our recommendations and for the opportunity to comment on H.R. 5, the *Student Success Act*.

Sincerely,

The Dignity in Schools Campaign
(www.dignityinschools.org)

¹⁸ Dignity in Schools, *What is School Pushout?*, available at <http://www.dignityinschools.org/sites/default/files/Dignity%20in%20Schools%20Fact%20Sheet2014Compressed-Sample.pdf>.